

1 you didn't see this chart, sir?

2 A I don't remember the chart.

3 Q Okay. Now, Mr. Goldstein, you
4 stated in your written testimony that you've
5 never seen a network calculate its ratings by
6 cobbling together a variety of local market
7 statistics. Do you recall that, sir?

8 A I do.

9 Q In all of your years of
10 experience, you've never seen that happen,
11 have you, sir?

12 A I don't recall it ever being
13 presented to me.

14 Q And you wouldn't expect to see
15 such ratings used or accepted by GroupM's ad
16 agencies as a substitute for national ratings,
17 would you, sir?

18 A As I said, I would not accept
19 those ratings as ratings that I would view as
20 viable to buy against.

21 Q And you were the CEO of GroupM, so
22 you wouldn't have accepted those at GroupM,

1 would you, sir?

2 A I probably would not have, no.

3 Q But you weren't involved in the
4 account level there when you were the CEO of
5 GroupM, were you?

6 A I was -- as I have indicated, I
7 was not negotiating across the table from each
8 and every salesman, no.

9 Q Were you aware that Mr. Herman has
10 testified that the clients represented by
11 GroupM bought ads from Tennis Channel based
12 upon their cobbled together ratings?

13 A I do not recall that.

14 Q Okay. You weren't involved in
15 those deals, so you don't have any knowledge
16 of it?

17 A No, I do not.

18 Q And Tennis Channel got ad buys
19 from Rolex, IBM, Allergen, and Gallo Winery
20 during the time you were at GroupM.

21 A Read me the clients again, if you
22 don't mind.

1 Q Rolex, IBM, Allergen, and Gallo
2 Winery.

3 A Okay.

4 Q And those were all GroupM clients,
5 were they not?

6 A Yes, they were.

7 Q Now, a final set of questions, Mr.
8 Goldstein. Let's say that Network M and
9 Network W cost the same amount, and that
10 Network M reaches 10 million homes, and
11 Network W reaches only 1 million homes. Okay?
12 Are you with me?

13 A So far.

14 Q And for both networks, only about
15 1 percent of the viewers who receive the
16 channel actually view the network. Correct,
17 sir?

18 A Go ahead.

19 Q So, the same percentage of people
20 who receive the channel actually view the
21 channel. The networks are equally popular
22 among people who get the channel, so that for

1 Network M that's 100,000 viewers, and Network
2 W that's 10,000 viewers.

3 A Yes.

4 Q You with me so far?

5 A Yes.

6 Q As an advertiser, you'd much
7 rather have, all other things being equal, the
8 Network M, wouldn't you, because it's 100,000
9 viewers.

10 A Not necessarily.

11 Q Well, sir, if they cost the same,
12 wouldn't you -- and they were reaching more or
13 less the same audience, wouldn't you rather
14 have Network M?

15 A Well, what do you mean by cost?
16 Do you mean unit cost, do you mean the cost
17 per thousand? What's the distribution? I
18 mean, you know, if -- is everything absolutely
19 identical?

20 Q I'm --

21 A Which I have never seen in my
22 total experience.

1 Q Well, I have the virtue of giving
2 you a hypothetical.

3 A If everything else is absolutely
4 identical, and ultimately it's not the unit
5 cost, it's the cost per thousand to deliver
6 the viewer. Okay?

7 Q Yes.

8 A Then, yes, we would go for the one
9 that probably -- that delivered more viewers
10 than less.

11 Q So, being broad -- my point is,
12 and I think you agree with me, being broadly
13 distributed helps the network. Doesn't it,
14 sir?

15 A In the hypothetical example that
16 you've provided, yes, it would.

17 Q And you see no benefit to a
18 nationally distributed cable network for being
19 distributed to fewer homes rather than more
20 homes, do you?

21 A From what perspective? I'm sorry.

22 Q From any perspective. Do you see

1 an advantage to having lesser distribution for
2 a nationally distributed network?

3 A HBO seems to have done pretty well
4 with limited distribution.

5 Q Does HBO advertise, sir?

6 A No, but you asked -- you didn't
7 ask that question.

8 Q Okay. Well, let's take only the
9 advertising supporting networks.

10 A Okay.

11 Q Which is what you're here to
12 testify about. Correct, sir?

13 A Okay.

14 Q And from an advertiser's
15 perspective, is there any advantage to lesser
16 distribution, sir?

17 A No, there really isn't.

18 Q And even with HBO, do you think
19 they prefer lesser or greater distribution?

20 A I can't answer the question.

21 Q I have one question I forgot to
22 ask you, which is, have you ever seen a

1 network with less than 40 million subscribers
2 buy national ratings?

3 A It is my understanding that there
4 are networks out there with less than 40
5 million who are buying some form of national
6 ratings, yes.

7 Q Well, sir, if you recall, when I
8 asked you this at your deposition you told me
9 you didn't know.

10 A At the time I did not.

11 Q So, since that time you've gone
12 back and you --

13 A I have done a little homework and
14 did a little investigation.

15 Q Did the Comcast folks help you?

16 A No, I did it on my own.

17 Q Okay, sir. But during your
18 experience up until the time of your
19 deposition you'd never seen that, had you,
20 sir?

21 A That's correct.

22 Q And the reason is that national

1 ratings are expensive, are they not, sir?

2 A Apparently, there are some
3 variations within national ratings that are
4 available at a slightly lower cost.

5 Q But, in addition, advertisers
6 understand that national ratings for more
7 limited distribution networks have reliability
8 issues, don't they, sir?

9 A Ratings in general have
10 reliability issues. They're perhaps a little
11 bit more depending on the level of
12 distribution.

13 Q And they're a little bit more,
14 they're certainly more for networks that have
15 smaller distribution than ones that have
16 larger distribution. Correct, sir?

17 A But at least they give some sense
18 of what the viewership is to the network, and
19 allow the buyer to be able to evaluate some
20 sense of a return on their investment, if
21 they're going to make a buy on that network.

22 Q Sir, is it -- let me get my

1 question again to you. Are advertisers aware
2 that there -- that national ratings are less
3 reliable for smaller networks than larger
4 networks?

5 A We're aware of that, yes.

6 Q And that becomes a factor in the
7 buy, doesn't it, sir?

8 A Much less than you would think.

9 MR. PHILLIPS: I don't have any
10 further questions.

11 JUDGE SIPPEL: Anything on
12 redirect? Mr. Schonman?

13 MR. SCHONMAN: Nothing, sir.

14 MR. MOSS: I just have a few --

15 JUDGE SIPPEL: Mr. Moss.

16 MR. MOSS: -- questions, Your
17 Honor, if I may. I'll try to be very brief.

18 JUDGE SIPPEL: Go ahead. Go right
19 ahead. Proceed.

20 REDIRECT EXAMINATION

21 BY MR. MOSS:

22 Q Mr. Goldstein, can you explain for

1 us why advertisers view Golf and Tennis
2 differently?

3 A Well, apart from the popularity
4 figure in terms of the viewership, in terms of
5 the marketing opportunities that are
6 available, they're two -- among other things,
7 you have this gender issue, if I may. Golf --
8 I'm sorry, Tennis is a very different telecast
9 in the sport. I mean, when you turn on Tennis
10 telecast, you never really know if you're
11 going to get a women's match or a men's match
12 until you get to the finals when it's
13 announced as a women's semi, or a women's
14 final. So, it's one of the few sports where
15 men and women are effectively competing in the
16 same event at the same time.

17 If you look at other sports,
18 whether it be Golf where there is a separate
19 league with the LPGA, you look at basketball
20 where there's a separate league with the WNBA,
21 the telecasts are either one gender or the
22 other.

1 I think one of the gender balance
2 issues with tennis is that you never quite
3 know what you're going to get when you turn
4 the television on, particularly in those early
5 first two weeks until you start that
6 elimination.

7 Q And remember Mr. Phillips was
8 asking you questions regarding demographics?

9 A Yes.

10 Q Can you tell me how the
11 demographics in terms of age compare between
12 Golf and Tennis?

13 A Well, Golf is generally a much
14 older audience, and has a higher average, if
15 you will, than do a lot of other sports,
16 including tennis, as I recall.

17 Q And recall Mr. Phillips asked you
18 questions regarding Versus and Tennis --

19 A Versus and, in fact, the NHL is
20 one of the youngest skewing male oriented
21 networks that we've got. In fact, I think
22 it's got about 80 percent of its viewers are

1 men, and with the NHL its average age is right
2 around 40 years of age. So, it's going to
3 appeal to a very different product than is the
4 Golf Channel.

5 Q Mr. Goldstein, I'd just like to
6 draw your attention to Tennis Channel Exhibit
7 99, Mr. Phillips asked you about. Just look at
8 the Table of Contents, if I could direct you
9 there. The first flip over. This is the --
10 this document.

11 A Oh, I'm sorry. Yes.

12 JUDGE SIPPEL: This is the Nielsen
13 document.

14 MR. MOSS: Yes, Your Honor.

15 THE WITNESS: Yes.

16 BY MR. MOSS:

17 Q Mr. Goldstein, is Tennis listed on
18 this Table of Contents?

19 A No, Tennis is not listed among any
20 of the other sports that run year round.

21 Q Do you know why?

22 A I do not know why. I can only

1 venture that they don't rank it as highly as
2 they do the NBA, the NFL, NCA, Basketball and
3 Football, PGA, Professional Golf, NASCAR,
4 Soccer, and the Winter Olympics.

5 Q Do you know any reason that
6 Nielsen would discriminate against Tennis?

7 A I have no idea why, no.

8 JUDGE SIPPEL: You haven't even
9 asked him if they do discriminate against
10 them. The fact that it's not listed like that
11 doesn't go to discrimination, does it?

12 MR. MOSS: That's quite correct,
13 Your Honor.

14 JUDGE SIPPEL: You did ask the
15 question of why he thinks that it's not
16 included in this Table of Contents.

17 MR. MOSS: Yes. That's correct.

18 JUDGE SIPPEL: And I recall his
19 answer. Okay.

20 MR. MOSS: No further questions,
21 Your Honor.

22 JUDGE SIPPEL: Anything from

1 anybody else?

2 MR. PHILLIPS: I've just got one
3 quick one.

4 JUDGE SIPPEL: What's a quick one?

5 MR. PHILLIPS: I'll try.

6 JUDGE SIPPEL: Let's go ahead.

7 RECROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q You testified, Mr. Goldstein, that
10 when you turned on the television you weren't
11 sure you were going to get men's tennis or
12 women's tennis, but the fact of the matter is
13 that the schedule for women's matches and
14 men's matches are announced months before for
15 television, aren't they, sir?

16 A Not always, no.

17 Q And the U.S. Open, sir, Sunday is
18 the men's final, is it not, sir?

19 A I said other than the finals and
20 the semis. I said during the week, I
21 distinguished the finals and semis when you
22 know very well what the women's final is

1 versus the men's final.

2 Q You know very well, and for the
3 semis and the finals, don't you, sir?

4 A Absolutely.

5 Q Right, sir. And you know during
6 the week if you look down at the schedules,
7 whether it's men's or women's, don't you, sir?

8 A You never quite know what's going
9 on, because you don't know how long a match is
10 going to be.

11 MR. PHILLIPS: I don't have any
12 further questions, Your Honor.

13 JUDGE SIPPEL: Well, it would make
14 a difference during the -- I'm asking this
15 question. I don't have any preconceived ideas,
16 but if you have some -- would you have any
17 advance information that say one or both of
18 the Williams sisters is going to be in a
19 particular match during the week?

20 THE WITNESS: Usually you know
21 what day they're going to participate. And in
22 the case of the Open, which is a rather unique

1 event in my opinion both from an advertiser
2 and a telecast point of view, you'll know
3 whether or not they're going to be during the
4 day or in the evening, because there are two
5 separate matches. There's a day session, and
6 an evening session, so you'd know which one
7 they will be in, but you may not know whether
8 they will be first, second, or third on the
9 card.

10 JUDGE SIPPPEL: Now, what was it --
11 - you said that -- you mentioned a difference
12 between -- something unique about the U.S.
13 Open Tennis?

14 THE WITNESS: Well, I think the
15 Tennis Grand Slams are unique events.
16 Wimbledon, the French, the Australian and,
17 obviously, the U.S. Open. The U.S. Open is a
18 highly marketed event. There are a lot of
19 advertisers who want to participate. But in
20 looking at, if you will, the totality, and I
21 look at the Tennis Grand Slams which take up
22 eight weeks of the year, roughly 15 percent of

1 the schedule, and they are the highlight, if
2 you will, of the telecast, on balance, those
3 are the only events I've ever had an
4 advertiser ask me to buy, is a Tennis Grand
5 Slam.

6 I have bought the U.S. Open, I
7 have bought Wimbledon, I have bought French,
8 but I have never been asked by any one of our
9 advertisers about anything other than one of
10 those four events.

11 JUDGE SIPPEL: Well, what about on
12 the Golf side?

13 THE WITNESS: It's a little bit
14 different. Okay? Generally speaking, I want
15 to be -- quote, it would be, "I want to be in
16 Golf. I want to be in Golf in February,
17 March, and April."

18 The Golf majors are sold a little
19 bit differently. And there are -- for
20 example, the Masters is only sold to, it's
21 either three or four advertisers with limited
22 commercial interruption, as opposed to a

1 normal telecast of any other event that would
2 have 20, 30, or 40 different advertisers.

3 The PGA is only sold, I believe
4 the number is eight advertisers, and they
5 share it. And each of them has a category
6 exclusivity, so if -- and I don't know. I'm
7 just using this as an example, if Chase Bank
8 is there, you won't see another bank. They
9 have exclusivity in that category.

10 The U.S. Open also sells a great
11 deal of it's advertising time on an exclusive
12 basis. I know, for example, that Master Card
13 is the exclusive credit card of the U.S. Open.
14 So, the Golf majors tend to be sold a little
15 bit differently. They are four days, so
16 they're highly concentrated. Advertisers tend
17 to be interested in Golf on a much longer time
18 frame during the course of the year.

19 JUDGE SIPPEL: Well, I'm trying to
20 think. What is the factor that permits
21 exclusivity of sponsors? Would it be that the
22 -- let's take the example you gave of the

1 Masters. The Masters may only want one --
2 they don't want their program -- is it their
3 programming you're getting, Masters?

4 THE WITNESS: Actually, their
5 program. They actually sell the time.

6 JUDGE SIPPEL: So, they don't want
7 it interrupted, except as they see it.

8 THE WITNESS: That's correct.

9 JUDGE SIPPEL: And they don't want
10 people to see more than what they -- I mean,
11 as far as the advertising.

12 THE WITNESS: Well, they want them
13 to see as much Golf as possibly can with as
14 few interruptions for commercials as they
15 possibly can. So, they sell it to a very
16 small group, and part of the understanding of
17 that is you're only buying a limited amount of
18 commercial time, so there are few
19 interruptions.

20 JUDGE SIPPEL: But that's only a
21 one-time thing, the Masters. Right?

22 THE WITNESS: Correct, once a

1 year.

2 JUDGE SIPPEL: So, that may be a
3 unique feature to the Masters, but --

4 THE WITNESS: It is. There's no
5 doubt, it is a very unique feature to the
6 Masters. But every sporting event -- I mean,
7 we talk about Golf as having a 33-week
8 schedule. Every event is an event unto
9 itself. The only real continuity, so to speak,
10 is the FedEx Cup, which is sponsored by
11 Federal Express, which is a series of four
12 tournaments that take place late August to the
13 championship. And it's actually an
14 elimination, so the field starts, I'm sorry,
15 with 125 players. It then gets cut to the top
16 75, then the top I think it's 60, and then the
17 final tournament is the top 30 players. And
18 the prize based on that four-tournament
19 package to the winner is \$10 million.

20 But that's the one Golf event
21 where there is a continuity over the course of
22 four separate tournaments. In the main, Golf

1 is, it starts on Thursday, and there's a
2 winner that's declared on Sunday.

3 JUDGE SIPPEL: Well, I'm not too
4 well versed in this, but I would assume that
5 most -- that the big audience is going to be
6 on Sunday. Perhaps big on Saturday, too, but
7 you --

8 THE WITNESS: The audience tends
9 to build, Thursday, Friday, picking up sizably
10 on Saturday. And you're absolutely right, the
11 largest audience tends to be on the final day.

12 JUDGE SIPPEL: Well, I draw a
13 comparison between that and say Basketball.
14 You've got two seasons of Basketball, the
15 regular season and the playoffs.

16 THE WITNESS: Right.

17 JUDGE SIPPEL: And then in any
18 game at all, whether it's -- any game that
19 means anything, anyway, for professional --
20 and professionally, it doesn't -- really the
21 real game doesn't start until the fourth
22 quarter.

1 THE WITNESS: I would agree with
2 you.

3 JUDGE SIPPEL: So, does that
4 change the advertising?

5 THE WITNESS: No, because you
6 can't ask for your advertising to appear all
7 in the fourth quarter. Generally, what
8 happens is that you buy what's called an equal
9 rotation, so you're going to have some ads in
10 the first quarter, some in the second, some in
11 the third, and some in the fourth. And then
12 it's your job as the buyer to monitor that on
13 a game-by-game basis to make sure that you're
14 getting a fair representation.

15 JUDGE SIPPEL: Now, I think that
16 that just raises a recollection I have. Maybe
17 this is the genius, perhaps, or Mr.
18 Steinbrenner, but at one time you're watching
19 Yankee games and it had a line on the backstop
20 area. And it would have such and such an ad,
21 and then it would rotate.

22 THE WITNESS: Yes.

1 JUDGE SIPPEL: Now, that's
2 certainly time that you really control.

3 THE WITNESS: That's correct. And
4 you buy that as an advertiser. Let's say if
5 they sell it based on the fact that they're
6 going to rotate it one inning at a time, so
7 let's say you buy an inning, you may buy the
8 first, or you may buy the fifth. Or, again,
9 not to use the rotation term, you may buy it
10 on a -- sometimes it'll be the first, the
11 second, the third, the fourth, et cetera
12 through the course of a game. But Mr.
13 Steinbrenner is not the only one, there are
14 quite a number of stadiums that either have
15 rotating signage, or there is a technology
16 available that allows virtual signage where
17 they can actually -- you and I are watching a
18 game, okay, and an ad appears on that
19 backstop, but if you're in the stadium you
20 wouldn't see that ad. That's a television
21 technology capability that exists to sell to
22 the viewer additional commercial time.

1 JUDGE SIPPEL: So, you're seeing
2 it on your TV screen.

3 THE WITNESS: Right, but in
4 stadium you wouldn't see it.

5 JUDGE SIPPEL: Now, I don't see --
6 this is really off the beat a little bit, but
7 I don't see that rotating sign much any more.
8 Has it kind of become passe?

9 THE WITNESS: I think it's become
10 passe. There was a Spanish company, and I
11 don't recall the name of it, that actually
12 introduced it into the United States, I'm
13 going to say 20 years ago, give or take. But
14 new technology and new ways of doing it -- you
15 might see the rotation more at an NBA game
16 court side. I believe that I have seen some
17 arenas that still have the rotating signage on
18 court side for a basketball game. And, of
19 course, at a hockey game you have all the
20 signage painted on the boards.

21 JUDGE SIPPEL: Well, in NASCAR you
22 have it painted on the jackets that they're

1 wearing.

2 THE WITNESS: And on the cars,
3 themselves. I mean, you can't get away from
4 it. And with in-car cameras, you'll see
5 things painted when they show the in-car
6 camera in the car itself.

7 JUDGE SIPPEL: Right before the
8 fatal crash.

9 THE WITNESS: Hopefully not.

10 JUDGE SIPPEL: Firestone.

11 THE WITNESS: Hopefully, not a
12 fatal crash. But, yes.

13 JUDGE SIPPEL: Thank you very
14 much.

15 THE WITNESS: You're welcome.

16 JUDGE SIPPEL: Does anybody else
17 have anything more on this?

18 MR. PHILLIPS: No, Your Honor.

19 MR. CARROLL: No, Your Honor.

20 JUDGE SIPPEL: Okay. Thank you
21 very much, Mr. Goldstein.

22 THE WITNESS: You're very welcome.

1 Thank you.

2 JUDGE SIPPEL: Have a good trip
3 back to New York.

4 THE WITNESS: Thank you.

5 JUDGE SIPPEL: Is that it?

6 MR. CARROLL: That's it, Your
7 Honor.

8 JUDGE SIPPEL: I can't believe it.
9 Very good. I mean, very good in the sense
10 that the timing is perfect, and it's
11 appreciated very much.

12 Now, the only thing -- I guess the
13 only thing of concern right now would be the
14 time for proposed findings. Is this too early
15 to talk about that?

16 MR. SCHMIDT: No, we'd love to
17 chat about that. We do have some -- a few
18 small housekeeping matters relating to the
19 experts.

20 If Your Honor will remember, when
21 Mr. Orszag was here, there was that issue of
22 his new opinions. We have talked with counsel